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APPLE INC./BSTZ
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EXAMINER

ALATA, AYOUB

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DALLAS DE ATLEY, HEIKO PANTHER, MITCHELL ADLER,
SIMON COOPER, MICHAEL BROUWER, and MATT REDA¹

Appeal 2015-007886
Application 12/398,001
Technology Center 2400

Before DEBRA K. STEPHENS, JON M. JURGOVAN, and
DAVID J. CUTITTA II, Administrative Patent Judges.

CUTITTA, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1, 3, 6–10, 12, 13, 15, 18–22, 24, 25, 27, 30–34 and 36, all pending claims of the application.² We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

We REVERSE.

¹ According to Appellants, the real party in interest is Apple, Inc. *See* Appeal Brief 1.

² Claims 2, 4, 5, 11, 14, 16, 17, 23, 26, 28, 29, and 35 are cancelled.

STATEMENT OF THE CASE

According to Appellants, the application relates to controlling the execution of software on a device by allowing software developers to have certain trusted rights in developing the software. Spec. ¶ 14.³ Claims 1, 13, and 25 are independent. Claim 1 is illustrative and is reproduced below with disputed limitations emphasized:

1. A computerized method of authorizing software on an electronic device including a processor, the method comprising:

receiving, by a kernel executing in a trusted space of an operating system executing on the processor, a request to execute a software module stored on the electronic device, the software module created by a developer trusted to test software on the electronic device;

communicating, by the kernel, data indicative of the software module to a policy service executing as a trusted process in an untrusted space of an operating system executing on the processor, the data indicative of the software module comprising at least one entitlement requested for executing the software module, and the policy service having been verified trusted upon execution;

obtaining, by the policy service, a digest generated from at least one portion of executable instructions for the software module, the digest signed by the developer;

identifying, by the policy service, one or more profiles for the developer associated with the software module, the one or more profiles created and signed by a trusted authority and comprising data indicative of at least one entitlement permitted for executing software created by the developer;

³ Throughout this Opinion, we refer to: (1) Appellants' Specification filed March 4, 2009 (Spec.); (2) the Final Office Action (Final Act.) mailed July 22, 2014; (3) the Appeal Brief (Appeal Br.) filed Mar. 23, 2015; (4) the Examiner's Answer (Ans.) mailed June 22, 2015; and (5) the Reply Brief (Reply Br.) filed Aug. 24, 2015.

authenticating, by the policy service, the at least one requested entitlement based at least in part on verifying the at least one requested entitlement against the at least one permitted entitlement in the one or more identified profiles and verifying the digest;

communicating, by the policy service, the at least one requested entitlement to the kernel; and

executing, by the kernel, the software module on the processor based on the at least one requested entitlement.

REFERENCES

The art relied upon by the Examiner in rejecting the claims on appeal:

Lin et al. (“Lin”)	US 2002/0078380 A1	June 20, 2002
Fanton et al. (“Fanton”)	US 2006/0150256 A1	July 6, 2006
Cambridge	US 7,080,000 B1	July 18, 2006

REJECTION

Claims 1, 3, 6–10, 12, 13, 15, 18–22, 24, 25, 27, 30–34 and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fanton, Lin, and Cambridge. Final Act. 6–18.

Our review in this appeal is limited only to the above rejection and issues raised by Appellants. We have not considered other possible issues that have not been raised by Appellants and which are, therefore, not before us. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2014).

ISSUE

Based on Appellants’ arguments, the dispositive issue presented on appeal is whether the Examiner errs in finding that the combination of Fanton, Lin, and Cambridge teaches or suggests “a policy service,” as recited in claim 1.

ANALYSIS

In the Final Office Action, the Examiner relies upon Fanton's whitelist database system to teach or suggest the claimed "policy service." Final Act. 7. In the Answer, the Examiner modifies the rejection to rely upon Fanton's "user mode service layer 110" to teach the claimed "policy service," instead of Fanton's whitelist database system. Ans. 4 (citing Fanton ¶ 62–63).

In response to the Examiner's modified rationale, Appellants argue Fanton does not teach or suggest that the services provided by the user mode service layer include obtaining a digest as claimed. Reply Br. 2. Appellants further argue Fanton does not teach or suggest that the services provided by the user mode service layer include identifying developer profiles as claimed. Reply Br. 2.

We find Appellants' arguments persuasive. With respect to "obtaining, by the policy service, a digest," as claimed, the Examiner finds this feature is taught by Fanton's MRU cache rather than Fanton's "user mode service layer 110." Final Act. 7. With respect to "identifying, by the policy service, one or more profiles for the developer," as claimed, the Examiner finds this feature is also taught by Fanton's MRU cache rather than Fanton's "user mode service layer 110." Final Act. 7. We note that in modifying, from the Final Office to the Answer, the rejection rationale to rely upon Fanton's user mode service layer to suggest the claimed policy service, the Examiner fails to revise the remainder of the rationale in the Answer to ensure consistency with this modification. Thus, while claim 1 recites that the policy service performs various functions including obtaining a digest, identifying one or more profiles, authenticating the at least one

requested entitlement, and communicating the at least one requested entitlement to the kernel, the Examiner fails to explain how the functions are performed by Fanton's user mode service layer, or why one skilled in the art would have found it obvious to perform the functions with different structure, such as Fanton's MRU cache.

The Examiner must show or provide reasoning as to how the prior art structure relied upon for teaching the "policy service" performs the steps of obtaining and identifying as recited in claim 1. Alternatively, the Examiner must explain why an ordinarily skilled artisan would have found it obvious to combine the functions in one element. That is, "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" taking into account the inferences and creative steps that a person of ordinary skill in the art would employ. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

In short, we conclude the Examiner's findings are premised on an inconsistent mapping of the "policy service" in claim 1. In connection with the "obtaining" and "identifying" limitations, the Examiner maps the "policy service" to Fanton's MRU cache. Final Act. 7. But, in connection with the "communicating, by the kernel" limitation of claim 1, the Examiner maps the "policy service" to Fanton's "user mode service layer 110." Ans. 4. The Examiner also provides no findings to support combining the teachings of the reference in a manner that maps "policy service" consistently or to adequately explain a skilled person's inferences and creative steps.

Accordingly, we concur with Appellants' argument that the Examiner has failed to establish Fanton teaches or suggests that the services provided by the user mode service layer include "obtaining, by the policy service, a digest" and "identifying, by the policy service, one or more profiles," as claimed.

Because we are unable to ascertain the basis in Fanton for the disputed findings discussed above, we are constrained to reverse the Examiner's 35 U.S.C. § 103(a) rejection of claim 1.

Because we agree with at least one of the dispositive arguments advanced by Appellants for claim 1, we need not reach the merits of Appellants' other contentions.

We also are constrained to reverse the rejection of independent claims 13 and 25, which recite commensurate limitations, and of dependent claims 3, 6–10, 12, 15, 18–22, 24, 27, 30–34 and 36, which stand with their respective independent claims.

DECISION

We reverse the Examiner's decision rejecting claims 1, 3, 6–10, 12, 13, 15, 18–22, 24, 25, 27, 30–34 and 36, under 35 U.S.C. § 103(a).

REVERSED